

The opinion in support of the decision being entered
today was not written for publication and
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Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GENE W. BROWN
and JEFFREY E.D. ROGERS

Appeal No. 2001-2072
Application No. 08/910,885

ON BRIEF

Before OWENS, DELMENDO, and PAWLIKOWSKI, Administrative Patent
Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-4 and 7-9. Claim 4 has been objected to but has been indicated as being allowable by the examiner on page 3 of the answer. Claims 5, 6, and 10-26 have been withdrawn from consideration as being directed to non-elected species. (answer, page 2).

Claim 1 is illustrative of the subject matter on appeal, and is set forth below, with the bolded text provided for emphasis:

1. A disposable filter cartridge for mounting in a filter housing, **the filter housing including a non-planar axially extending seating surface** following a ring-shaped path having no structural metal parts and comprising in combination:

a pleated paper filter media formed into a cylinder coaxial about an axis in which the pleats define a cylindrical internal bore within the filter media and a cylindrical outer periphery,

first and second end caps connected to the pleats at respective axial ends of the filter media,

the filter cartridge having an intended flow path from a higher pressure region at its outer periphery to a lower pressure region at its internal bore,

the first end cap having associated therewith **an elastomeric radial seal gasket** positioned at the out periphery to protect the corresponding end cap from the higher pressure region at the outer periphery of the filter cartridge, **the radial seal gasket having a sealing flange, the sealing flange including a sealing surface with a diameter closely dimensioned to the outer diameter of the axially extending seating surface such that the sealing flange is adapted to be pressed radially inward toward the axis into a sealing relationship against the axially extending seating surface by said higher pressure,**

the second end cap having associated therewith gasket means for preventing the higher pressure in the region at the outer periphery of the filter cartridge from being applied to the outside end of said other end cap,

the end caps and pleats being adapted to accept a structural supporting tube in a filter housing to assist the pleated paper in withstanding pressure applied in a radial direction from the outer periphery to the internal bore,

the gaskets associated with the respective end caps being configured to communicate the lower pressure in the region at the internal bore to the end caps to avoid the application of crushing axial loads to the filter cartridge.

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The examiner relies upon the following references as evidence of unpatentability:

Caserta	2,460,168	Jan. 25, 1949
Hockett	3,095,290	June 25, 1963
Covington	5,587,066	Dec. 24, 1996 (filed Feb. 8, 1994)
Brown et al. (Brown)	5,685,985	Nov. 11, 1997 (filed Dec. 20, 1995)
Erdmannsdoerfer et al. (Erdmannsdoerfer)	5,741,421	Apr. 21, 1998 (filed Nov. 21, 1995)
Barrington (UK)	2 134 811	Aug. 22, 1984

Claim 1 stands rejected under 35 U.S.C. § 103 as being obvious over Hockett.

Claims 2, 3, and 7 stand rejected under 35 U.S.C. § 103 as being obvious over Hockett in view of Barrington.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Hockett in view of Barrington and further in view of Caserta.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Hockett in view of Barrington and further view of Erdmannsdoerfer.

Claim 1 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 5,685,985.

Claims 2, 3, and 7 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 5,685,985 in view of Barrington.

Claim 8 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 5,685,985 in view of Barrington and further in view of Caserta.

Claim 9 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 5,685,985 in view of Barrington and further in view of Covington.

On page 2 of the Brief, appellants indicate that they focus on the obviousness rejection of claim 1, the sole independent claim, to narrow the issues on this appeal. Appellants state that they do not address the other obviousness rejections involving the dependent claims. Appellants state that if the rejection of claim 1 is obviated, there is no need to address these other obviousness rejections.

OPINION

For the reasons set forth below, we reverse each of the 35 U.S.C. § 103 rejections. However, because appellants have not argued against each of the judicially created doctrine of obviousness-type double patenting rejections, and have not submitted a terminal disclaimer as suggested by the examiner (answer, page 2), we sustain each of these rejections, pro forma.

I. The 35 U.S.C. § 103 Rejections

On page 11 of the answer, the examiner acknowledges that Hockett fails to teach the functional limitations of gasket seal 16 (shown in Figure 4 of Hockett) as forming a radial seal against an axially extending ring shaped seating surface of a

filter housing and as having a diameter closely dimensioned to the outer diameter of the seating surface of a filter housing as recited in appellants' claim 1. However, the examiner states that such limitations relate to the intended use of a filter cartridge and carry no patentable weight.

In response, appellants refer to the case of In re Stencel, 828 F.2d 751,754-55, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987). Appellants argue that in this case, the Court held that the appellant is not barred from describing a driver in terms of the structure imposed upon it by the collar as recited in the preamble. (brief, page 8 and reply brief, page 2).

In response, the examiner states that In re Stencel does not apply because the case concerns a lack of motivation to combine two references under 35 U.S.C. § 103 whereas the rejection of instant claim 1 involves a single reference under 35 U.S.C. § 103. (answer, page 11).

It appears to us that appellants' position is that their claim 1 distinguishes over Hockett in that the filter cartridge includes a sealing flange including a sealing surface with a diameter closely dimensioned to the outer diameter of the axially extending seating surface of the filter housing such that the sealing flange is adapted to be pressed radially inward toward the axis into a sealing relationship against the axially extending seating surface of the filter housing. In this way, appellants argue that their filter cartridge is being described in their claim 1 in terms of the structure imposed upon it by the axially extending seating surface 102 of flange 103 of the filter housing.

We find that appellants' Figure 3 illustrates radial seals 50 and 51 each having lips 84, 85 that are pressed firmly against

mating flanges 86 and 87 of the filter housing, enhancing the seal in that area. Figure 4 also illustrates upper radial seal 50 wherein the seal comprises an axially extending flexible flange 100 of a suitable elastomeric material. The radial seal 50 preferably has a rounded or beveled nose 101 to facilitate insertion of the filter into the end cap and a substantially flat sealing surface 102. Resilient flange 100 of the radial seal 50 which is pressed against flange 103 of the filter housing.

From the illustration of Figure 4, we find that sealing flange 100 has a sealing surface 102 that has a diameter that is closely dimensioned to the outer diameter of the sealing surface of metal flange 103 of the filter housing. In this way, therefore, appellants' filter cartridge is described in terms of the structure imposed upon it by the filter housing. Therefore, pursuant the holding in In re Stencel, we disagree with the examiner's position that this aspect of appellants' claim carries no patentable weight. Pursuant In re Stencel, appellants are not barred from describing the filter cartridge in terms of the structure imposed upon it by the filter housing.

While the examiner argues that the sealing surface of Hockett "is obviously capable of being pressed radically inward toward the axis into a sealing relationship against an axially extending seating surface ..." (answer, page 5), he has not adequately established on this record that Hockett's sealing surface would necessarily "be pressed radially inward toward the axis into a sealing relationship" against an axially extending seating surface of a housing.

The secondary references of Barrington, Caserta, and Erdmannsdoerfer do not cure the deficiencies of Hockett.

We therefore **reverse** each of the 35 U.S.C. § 103 rejections.

II. The obviousness-type double patenting rejections

We sustain these rejections pro forma because appellants have not argued against these rejections in the brief and reply brief.

III. Conclusion

We **reverse** the rejection of claim 1 under 35 U.S.C. § 103 as being obvious over Hockett.

We **reverse** the rejection of claims 2, 3, and 7 under 35 U.S.C. § 103 as being obvious over Hockett in view of Barrington.

We **reverse** the rejection of claim 8 under 35 U.S.C. § 103 as being unpatentable over Hockett in view of Barrington and further in view of Caserta.

We **reverse** the rejection of claim 9 under 35 U.S.C. § 103 as being unpatentable over Hockett in view of Barrington and further view of Erdmannsdoerfer.

We **sustain** each of the obviousness-type double patenting rejections.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED

Terry J. Owens)	
Administrative Patent Judge)	
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Romulo H. Delmendo)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
Beverly A. Pawlikowski)	
Administrative Patent Judge)	

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Leydig, Voit, & Mayer
180 North Stetson
Two Prudential Plaza
Suite 4900
Chicago, IL 60601-6780